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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,006	01/28/2002	Olof Norrlow	3502-1003	2091
466	7590	11/26/2003		
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202				
			EXAMINER LISH, PETER J	
			ART UNIT 1754	PAPER NUMBER

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,006

Applicant(s)

NORLOW ET AL.

Examiner

Peter J Lish

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Applicant's arguments filed 9/17/03 have been fully considered but they are not persuasive. Applicants point to example 5 of the present application to show the differences between the products of the present application and those of Korvela (both WO '291 and EP '557). However, example 5 does not compare the sodium percarbonate particles, it compares the sodium percarbonate particles additionally coated with sodium sulphate. Therefore, the results do not show a difference between the sodium percarbonate particles made by the process of claim 1 and those of the cited prior art.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Korvela et al. (WO 95/15291).

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Korvela teaches a sodium percarbonate particle with a coating of sodium bicarbonate. No difference is seen between the products of Korvela and those of the instantly claimed invention. It is held that when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claimed in a product-by-process claim, a rejection based alternatively on either section 102 or section 103 of the statute is eminently fair and acceptable. The burden to show a different product is thereby shifted to the applicant, as the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith. See *In re Brown*, 173 USPQ 685, 688 and *In re Fessman*, 180 USPQ 324.

Claim 13 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jun et al. (JP 10-194710).

Jun teaches a sodium percarbonate particle with a coating of alkali metal bicarbonate. Jun additionally teaches the preferred use of sodium salts, such as sodium bicarbonate, for economic reasons. No difference is seen between the products of Jun et al. and those of the instantly claimed invention. It is held that when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claimed in a product-by-process claim, a rejection based alternatively on either section 102 or section 103 of the statute is eminently fair and acceptable. The burden to show a different product is thereby shifted to the applicant, as the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical

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comparisons therewith. See *In re Brown*, 173 USPQ 685, 688 and *In re Fessman*, 180 USPQ 324.

Allowable Subject Matter

Claims 1-10 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J Lish whose telephone number is 703-308-1772 until December 11th and 571-272-1354 thereafter. The examiner can normally be reached on 9:00-6:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached at 703-308-3837 until December 11th and 571-272-1358 thereafter. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

PL

STUART L. HENDRICKSON
PRIMARY EXAMINER